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DRAFT PENSION SCHEME REGULATIONS FOR MEMBERS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Prepared by the Tribunal

Explanatory note concerning the draft Pension Scheme Regulations for members of the International Tribunal for the Law of the Sea

1. Article 18, paragraph 7, of the Statute of the International Tribunal for the Law of the Sea (annex VI to the United Nations Convention on the Law of the Sea) provides the following:

> "Regulations adopted at meetings of the States Parties shall determine the conditions under which retirement pensions may be given to members of the Tribunal and to the Registrar ..."

2. The corresponding provision of the Statute of the International Court of Justice (Article 32, paragraph 7) reads:

> "Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded."

To implement this provision, the General Assembly of the United Nations adopted resolution 86 (I) on 11 December 1946, to which was annexed the Pension Scheme Regulations for members of the International Court of Justice.

3. The mandate of seven judges of the Tribunal who were elected on 1 August 1996 and chosen by lot to serve for a limited period, that is to say for only three years, will expire on 30 September 1999. Any judge who is not re-elected would be normally entitled, after this date, to receive a pension.

4. The Tribunal decided on 18 February 1998, in accordance with rule 6, paragraph (e), of the Rules of Procedure for Meetings of States Parties, to propose the inscription on the provisional agenda of the eighth Meeting of States Parties of an item concerning the question of the judges' retirement pension and to propose for consideration of the States Parties draft "Pension Scheme Regulations for members of the International Tribunal for the Law of the Sea".

5. The draft Pension Scheme proposed is similar to the current Pension Scheme Regulations for members of the International Court of Justice, as approved by successive resolutions of the General Assembly of the United Nations, the most recent of which is resolution 45/250 B of 21 December 1990.

DRAFT PENSION SCHEME REGULATIONS FOR MEMBERS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Article 1

Retirement pension

1. A member of the International Tribunal for the Law of the Sea who has ceased to hold office and who has reached the age of 60 shall be entitled during the remainder of his/her life, subject to paragraph 4, to a retirement pension, payable monthly, provided:

(a) That he/she has completed at least three years of service;

(b) That he/she has not been required to relinquish his/her appointment in accordance with article 9 of the Statute of the Tribunal for reasons other than the state of his/her health.

2. The amount of the retirement pension shall be determined as follows:

(a) If the member has served a full term of nine years, the amount of the annual pension shall be $50,000;

(b) If he/she has served for more than nine years, the amount of the retirement pension shall be increased by $250 for each month of service in excess of nine years provided that the maximum retirement pension shall not exceed $75,000;

(c) If he/she has served for less than a full term of nine years, the amount of the pension shall be that proportion of the annual pension which the number of months of his/her actual service bears to 108.

3. A member who ceases to hold office before the age of 60 and who would be entitled to a retirement pension when he/she reached that age may elect to receive a pension from any date after the date on which he/she ceases to hold office. Should he/she so elect, the amount of such pension shall be that amount which has the same actuarial value as the retirement pension which would have been paid to him/her at the age of 60.

4. No retirement pension shall be payable to a former member who has been re-elected to office until he/she again ceases to hold office. At that time, the amount of his/her pension shall be calculated in accordance with paragraph 2 on the basis of his/her total period of service and shall be subject to a reduction equal in actuarial value to the amount of any retirement pension paid to him/her before he/she reached the age of 60.

Article 2

Disability pension

1. A member found by the Tribunal to be unable to perform his/her duties because of permanent ill-health or disability shall be entitled upon leaving office to a disability pension payable monthly.

2. The amount of the disability pension shall be equal to the amount of the retirement pension which would have been payable to the member of the Tribunal concerned had he/she, at the time of leaving office, completed the term for which he/she had been elected, provided that it shall not be less than one half of the annual pension.

Article 3

Surviving spouse's pension

1. Upon the death of a married member, his/her surviving spouse shall be entitled to a surviving spouse's pension amounting to one half of the pension which he/she would have received had he/she become entitled to a disability pension at the time of his/her death, provided that the surviving spouse's pension shall not be less than one third of the annual pension.

2. Upon the death of a married former member who was in receipt of a disability pension, his/her surviving spouse, provided he/she was his/her spouse at the date his/her service ended, shall be entitled to a surviving spouse's pension amounting to one half of the pension which his/her spouse was receiving, provided that the surviving spouse's pension shall not be less than one third of the annual pension.

3. Upon the death of a married former member who was entitled to a retirement pension, his/her surviving spouse, provided he/she was his/her spouse at the date his/her service ended, shall be entitled to a surviving spouse's pension calculated as follows:

(a) If the former member had not begun, at the date of his/her death, to receive his/her retirement pension, the surviving spouse's pension shall amount to one half of the pension which would have been payable to him/her under article 1, paragraph 3, had he/she commenced to receive such pension on the date of his/her death, provided that the surviving spouse's pension shall not be less than one sixth of the annual pension;

(b) If the former member had begun to receive his/her retirement pension, under article 1, paragraph 3, before he/she reached the age of 60, the surviving spouse's pension shall amount to one half of the amount of such pension, but shall not be less than one sixth of the annual pension;

(c) If the former member had reached the age of 60 when he/she began to receive his/her retirement pension, the surviving spouse's pension shall amount to one half of his/her retirement pension, but shall not be less than one third of the annual pension.

4. A surviving spouse's pension shall cease on his/her remarriage.

Article 4

Child's benefit

1. Each child or legally adopted child of a member or former member who dies shall be entitled, while unmarried and under the age of 21, to a benefit calculated as follows:

(a) Where there is a surviving spouse entitled to a pension under article 3, the annual amount of the child's benefit shall be:

(i) Ten per cent of the retirement pension which the former member was receiving; or

(ii) If the former member had not begun, at the date of his/her death, to receive his/her retirement pension, 10 per cent of the pension which would have been payable to him/her under article 1, paragraph 3, had he/she commenced to receive such pension on the date of his/her death; or

(iii) In the case of the death of a member in office, 10 per cent of the pension which he/she would have received had he/she qualified for a disability pension at the date of his/her death;

provided, in all cases, that the amount of the child's benefit shall not exceed one eighteenth of the annual pension;

(b) Where there is no surviving spouse entitled to a pension under article 3, or where the surviving spouse dies, the total amount of the children's benefits payable under subparagraph (a) shall be increased by the following amount:

(i) If there is only one eligible child, by one half of the amount of the pension which was being paid or would have been paid to the surviving spouse;

(ii) If there are two or more eligible children, by the amount of the pension which was being paid or would have been paid to the surviving spouse;

(c) The total children's benefits payable under subparagraph (b) above shall be divided equally among all the eligible children to determine the amount of any one child's benefit; as and when a child ceases to be eligible, the total benefit payable to the remainder shall be recalculated in accordance with subparagraph (b).

2. The total amount of children's benefit, when added to the amount of any surviving spouse's benefit in payment, shall not exceed the pension which the member or former member received or would have received.

3. The age limit mentioned in paragraph 1 shall be waived if the child is incapacitated by illness or injury, and the benefit shall continue to be paid for as long as the child remains incapacitated.

Article 5

Definitions

1. "Member" means an elected member of the Tribunal in office.

2. "Annual pension" means the retirement pension referred to in article 1, paragraph 2 (a).

Article 6

Miscellaneous

1. Pensions provided for by these Regulations shall be calculated in terms of the currency in which the salary of the member concerned has been fixed by the Meeting of States Parties.

2. All pensions provided for by these Regulations shall be regarded as expenses of the Tribunal, within the meaning of article 19 of the Statute of the Tribunal.

3. The President of the Tribunal and the Registrar shall determine conditions for the application of article 4, paragraph 3, and, on the advice of a qualified actuary or actuaries, establish a table of actuarial reduction factors.

Article 7

Application and effective date

These Regulations shall be applicable as from 1 October 1996 to all members of the Tribunal on or after that date and to their eligible beneficiaries.